

Coast Guard, DHS

§ 52.2

PART 52—BOARD FOR CORRECTION OF MILITARY RECORDS OF THE COAST GUARD

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AUTHORITY: 10 U.S.C. 1552; 14 U.S.C. 425.

SOURCE: OST Doc. No. 2002-13439, 68 FR 9886, Mar. 3, 2003, unless otherwise noted.

Subpart A—Purpose and Authority

§ 52.1 Purpose.

This part establishes the procedure for application for correction of military records of the Coast Guard, for consideration of applications by the Department of Homeland Security Board for Correction of Military Records of the Coast Guard (hereinafter “the Board”), and for settling claims or determining monetary benefits.

[OST Doc. No. 2002-13439, 68 FR 9886, Mar. 3, 2003, as amended by USCG-2003-15404, 68 FR 37740, June 25, 2003]

§ 52.2 Authority.

(a) The Secretary of Homeland Security, acting through boards of civilians, is authorized to correct any military record of the Coast Guard when the Secretary considers it necessary to correct an error or remove an injustice. 10 U.S.C. 1552. The Secretary shall ensure that final action on a complete application for correction is taken within 10 months of its receipt.

(14 U.S.C. 425)

(b) Corrections made under this authority are final and conclusive on all officers of the Government except when procured by fraud. 10 U.S.C. 1552(a)(4).

[OST Doc. No. 2002-13439, 68 FR 9886, Mar. 3, 2003, as amended by USCG-2003-15404, 68 FR 37740, June 25, 2003]

**Subpart B—Establishment,
Function, and Jurisdiction of Board**

§ 52.11 Establishment and composition.

(a) Pursuant to 10 U.S.C. 1552, the Board for Correction of Military Records of the Coast Guard is established in the Office of the Secretary of Homeland Security.

(b) The Secretary appoints a panel of civilian officers or employees of the Department of Homeland Security to serve as members of the Board, and designates one such member to serve as Chair of the Board. The Chair designates members from this panel to serve as the Board for each case requiring consideration by a Board. The Board consists of three members, and two members present constitute a quorum of the Board.

(c) The Deputy Chair of the Board exercises the functions prescribed by these regulations and such other duties as may be assigned by the Chair.

[OST Doc. No. 2002–13439, 68 FR 9886, Mar. 3, 2003, as amended by USCG–2003–15404, 68 FR 37740, June 25, 2003]

§ 52.12 Function.

The function of the Board is to consider all applications properly before it, together with all pertinent military records and any submission received from the Coast Guard or other Government office under subpart E, to determine:

(a) Whether an error has been made in the applicant's Coast Guard military record, whether the applicant has suffered an error or injustice as the result of an omission or commission in his or her record, or whether the applicant has suffered some manifest injustice in the treatment accorded him or her; and

(b) Whether the Board finds it necessary to change a military record to correct an error or remove an injustice.

§ 52.13 Jurisdiction.

(a) The Board has jurisdiction to review and determine all matters properly brought before it, consistent with existing law and such directives as may be issued by the Secretary.

(b) No application shall be considered by the Board until the applicant has

exhausted all effective administrative remedies afforded under existing law or regulations, and such legal remedies as the Board may determine are practical, appropriate, and available to the applicant.

**Subpart C—General Provisions
Regarding Applications**

§ 52.21 General requirements.

(a) An application for correction of a Coast Guard record shall be submitted on DD Form 149 (Application for Correction of Military or Naval Record) or an exact copy thereof, and shall be addressed to: Chair, Board for Correction of Military Records of the Coast Guard (C–60), United States Department of Transportation, Washington, DC 20590. Forms and explanatory material may be obtained from the Chair of the Board.

(b) The application shall be signed by the person alleging error or injustice in his or her military record, except that an application may be signed by a family member or legal representative with respect to the record of a deceased, incapacitated, or missing person. The family member or legal representative must submit proof of his or her proper interest with the application.

(c) No application shall be docketed or processed until it is complete. An application for relief is complete when all of the following have been received by the Board:

(1) A signed DD Form 149, providing all necessary responses, including a specific allegation of error or injustice, accompanied by substantial evidence or information in support of such allegation;

(2) The military records of the applicant; and

(3) Any applicable military and Department of Veterans Affairs medical records.

(d) It is the applicant's responsibility to include his or her correct mailing address on the DD Form 149 and to inform the Chair in writing of any subsequent change of address until the Board or the Secretary takes final action on the application.

(e) Briefs in support of applications must be assembled in a manner that

permits easy reproduction and may not exceed twenty-five double-spaced type-written pages in a type size with no more than twelve characters per inch. This limitation does not apply to supporting documentary evidence. In complex cases, the Chair may waive this limitation.

§ 52.22 Time limit for filing application.

An application for correction of a record must be filed within three years after the applicant discovered or reasonably should have discovered the alleged error or injustice. If an application is untimely, the applicant shall set forth reasons in the application why it is in the interest of justice for the Board to consider the application. An untimely application shall be denied unless the Board finds that sufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file timely.

§ 52.23 Counsel.

(a) Applicants may be represented by counsel at their own expense. Applicants whose cases are processed under the Whistleblower Protection Act and who are granted a hearing by the Board may be entitled to representation by a Coast Guard law specialist. 10 U.S.C. 1034(f)(3)(A).

(b) As used in this part, the term “counsel” includes attorneys who are members in good standing of any bar; accredited representatives of veterans’ organizations recognized by the Secretary of Veterans Affairs pursuant to 38 U.S.C. 5902; and other persons who, in the opinion of the Chair, are competent to represent the applicant for correction. Whenever the term “applicant” is used in these rules, except in § 52.21(c), the term shall mean an applicant or his or her counsel.

§ 52.24 Evidence and burden of proof.

(a) It is the responsibility of the applicant to procure and submit with his or her application such evidence, including official records, as the applicant desires to present in support of his or her case. All such evidence should be submitted with the applicant’s DD Form 149 in accordance with

§ 52.21(c)(1). Evidence submitted by an applicant after an application has been filed and docketed shall be considered late and its acceptance is subject to the provisions in § 52.26(a)(4) and (c).

(b) The Board begins its consideration of each case presuming administrative regularity on the part of Coast Guard and other Government officials. The applicant has the burden of proving the existence of an error or injustice by the preponderance of the evidence.

§ 52.25 Access to official records.

The applicant shall have such access to official records or to any information pertaining to the applicant which is in the custody of the Coast Guard as is provided in 49 CFR parts 7 and 10.

§ 52.26 Right to timely decision; effect of requests for extensions, changes in requests for relief, and late submissions of evidence.

(a) Each applicant has a right to have final action taken on his or her application within 10 months after all the elements of a complete application, as defined in § 52.21(c), have been received by the Board, unless the applicant:

(1) Submits a written request, which is granted by the Chair, for an extension of a specific duration to seek counsel or additional evidence;

(2) Submits a written request, which is granted by the Chair, for an extension of the time provided for responding to the views of the Coast Guard in accordance with § 52.42(d);

(3) Submits a signed statement that is determined by the Chair to significantly amend the applicant’s request for relief after the application has been docketed;

(4) Submits significant new evidence, as determined by the Chair, after the application has been docketed; or

(5) Is found by the Chair to have unreasonably delayed responding to a request for further information or evidence.

(b) If the applicant requests an extension in accordance with paragraphs (a)(1) or (a)(2) of this section or unreasonably delays responding to a request for further information or evidence in accordance with paragraph (a)(5) of this section, he or she shall have a

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right to have final action taken on the application for correction within 10 months of the application's completion plus all periods of extension granted to the applicant by the Chair and all periods of unreasonable delay.

(c) If the applicant significantly amends his or her request for relief or submits significant new evidence after the application has been docketed, in accordance with paragraphs (a)(3) or (a)(4) of this section, the application shall be considered newly complete as of the date the amended request for relief or new evidence is received, in which case the applicant shall have a right to have final action taken on the application within 10 months of the date the Board receives the amended request for relief or significant new evidence.

§ 52.27 Withdrawal of application.

The Chair may, at his or her discretion, permit the applicant to withdraw his or her application at any time before final action is taken under § 52.64. Any further consideration by the Board of the issues raised in the withdrawn application shall occur only upon the filing of a new application.

§ 52.28 Stay of proceedings.

An application to the Board for correction of a military record does not operate as a stay of any proceeding or administrative action taken with respect to or affecting the applicant.

Subpart D—Consideration of Application and Administrative Closure

§ 52.31 Consideration of application.

Each application shall be reviewed by the Chair to determine whether it meets the requirements of § 52.21 before it is docketed. The Chair shall decide in appropriate cases whether to grant a hearing or to recommend disposition on the merits without a hearing.

§ 52.32 Administrative closure.

(a) The Chair may administratively close a case after it has been docketed and at any time prior to its consideration by the Board if the Chair determines that:

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(1) The application was erroneously docketed because the application did not meet the criteria under § 52.21;

(2) Effective relief cannot be granted by the Board;

(3) The Board does not have jurisdiction to determine the issues presented or the applicant has not exhausted an available administrative remedy, as required under § 52.13(b); or

(4) The Coast Guard has granted effective relief satisfactory to the applicant.

(b) Administrative closure does not constitute a denial of relief. Applicants who believe their cases should not have been administratively closed by the Chair may resubmit their applications with a request for further consideration and a statement explaining why the applicant believes his or her case should be docketed and considered by the Board. A request for further consideration shall be regarded as a new application for the purposes of §§ 52.21 and 52.26.

(c) If the Chair administratively closes a case, the applicant shall be advised of the reason and of the right to resubmit his or her application.

Subpart E—Submissions by the Coast Guard and Other Offices

§ 52.41 Assistance.

The Board may request such advice, opinion, assistance, or use of the facilities of any other bureau, board, or office of the Department of Transportation as the Board deems necessary.

§ 52.42 Views of the Coast Guard.

(a) The Board shall transmit to the Commandant of the Coast Guard or his or her delegate a copy of each application for relief submitted and docketed under subpart C of this part, together with any briefs, memoranda, and documentary evidence submitted or obtained in the case.

(b) The Commandant of the Coast Guard or his or her delegate may forward to the Board a written advisory opinion presenting the views of the Coast Guard on any case before the Board.

(c) An advisory opinion furnished by the Coast Guard under this section shall not be binding upon the Board,

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but shall be considered by the Board, along with all other information and material submitted in the particular case, if it is received by the Board within 135 days of the date the application is complete. The Chair may, in his or her discretion, grant the Coast Guard an extension of the time provided for submitting the advisory opinion.

(d) The Board shall promptly send a copy of each submission made by the Coast Guard under this section to the applicant involved, subject to the limitations in §§ 52.42(c) and 52.43(c). Each applicant has 30 days, from the date the Board sends the submission, to submit to the Board a written rebuttal or response to the Coast Guard's advisory opinion or a written request for an extension of the time to respond, subject to the provisions in § 52.26.

(e) Advisory opinions submitted by the Coast Guard and briefs submitted by applicants in response to the advisory opinions of the Coast Guard must be assembled in a manner that permits easy reproduction and may not exceed fifteen double-spaced typewritten pages in a type size with no more than twelve characters per inch. This limitation does not apply to supporting documentary evidence. In complex cases, the Chair may waive this limitation.

§ 52.43 Requests for further information; submissions of classified, privileged, and sensitive information.

(a) The Chair or the Board may ask the applicant to submit additional information not included in the application or response to the advisory opinion.

(b) The Chair or the Board may ask the Coast Guard or other Government office to submit any information, including reports of investigations, that the Chair or the Board deems relevant to an applicant's case.

(c) Whenever the Coast Guard or other Government office submits classified, privileged, or sensitive information to the Board in accordance with paragraph (b) of this section or § 52.42(b), it shall identify such information and also provide the Board with a copy of that part of the information that would be released to the applicant

by the Coast Guard or other Government office if he or she requested it under 49 CFR parts 7 and 10. The Board shall forward only this redacted copy to the applicant.

Subpart F—Hearings

§ 52.51 General provision.

In each case in which the Chair determines that a hearing is warranted, the applicant will be entitled to be heard orally in person, by counsel, or in person with counsel.

§ 52.52 Notice of hearing.

(a) If the Chair determines that a hearing is warranted, the Chair shall notify the applicant that a hearing has been granted.

(b) The date of hearing shall be not less than 21 days from the date of this notification. Written notice stating the date, time, and place of the hearing shall be given to the applicant and the Coast Guard.

§ 52.53 Witnesses.

(a) In any case in which the Chair has granted a hearing, the applicant shall have the right to present witnesses.

(b) It is the responsibility of the applicant to notify his or her witnesses and to ensure their appearance at the date, time, and place set for the hearing.

§ 52.54 Expenses.

No expenses of any nature whatsoever incurred by an applicant, his or her counsel, witnesses, or others acting on behalf of the applicant shall be paid by the Government, except that an applicant may be entitled to representation by a Coast Guard law specialist if the case has been processed under the Whistleblower Protection Act. 10 U.S.C. 1034(f)(3)(A).

§ 52.55 Nonappearance.

An applicant who fails without good cause to appear in person or by counsel at the appointed date, time, and place for hearing, is deemed to have waived the right to a hearing. The application is then considered by the Board on the basis of all the material of record.

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§ 52.56 Conduct of hearing.

(a) The Chair or the Chair's designee shall conduct a hearing so as to ensure a full and fair presentation of the evidence.

(b) The hearing is not limited by legal rules of evidence, but reasonable standards of competency, relevancy, and materiality are observed for the receipt and consideration of evidence.

(c) All testimony shall be given under oath or affirmation.

§ 52.57 Record of hearing.

A hearing pursuant to this subpart in open session shall be recorded verbatim and, at the discretion of the Board or direction of the Secretary, shall be transcribed.

Subpart G—Judgment and Disposition

§ 52.61 Deliberations and decision.

(a) The Board is convened at the call of the Chair and its meetings are recessed or adjourned by order of the Chair. Only members of the Board and its staff may be present during the deliberations of the Board. The Board's deliberations are conducted in executive session and are not reported.

(b) When the Board finds that the facts have not been fully and fairly disclosed by the records, testimony, and any other evidence before the Board, the Board may request the applicant and/or the Coast Guard to obtain and submit such further evidence as it considers essential to a complete and impartial understanding of the facts and issues.

(c) Following the receipt of all evidence, the Chair shall cause to be prepared and shall submit to the Board for its consideration a draft decision containing proposed findings and conclusions and a proposed order. A majority vote of the members of the Board present at a meeting on any matter relating to a draft decision before the Board shall constitute the action of the Board. If a draft decision is approved by the Board, it shall become a decision of the Board.

(d) The decision of the Board shall specify any change, correction, or modification of records to be made by

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the Coast Guard, and any other action deemed necessary to provide full and effective relief, which may include directing the Coast Guard to convene medical boards.

(e) If the Board deems it necessary to submit a comment or recommendation to the Secretary as to a matter arising from, but not directly related to, the issues in a case, it does so by separate communication.

§ 52.62 Minority report.

In case of disagreement among Board members, a minority report may be submitted dissenting from or concurring with the decision of the Board.

§ 52.63 Record of proceedings.

(a) The Board shall prepare a complete record of each proceeding. The record shall include the application for relief; the written views of the Coast Guard, if any; any transcript of testimony; affidavits and documents considered by the Board; briefs and written arguments filed in the case; the findings, decisions, and recommendations of the Board; minority reports, if any; and all other materials necessary to reflect a true and complete history of the proceedings.

(b) After final action has been taken on an application in accordance with § 52.64, any classified, privileged, or sensitive information in the record of proceedings that has been provided by the Coast Guard or another Government office in accordance with §§ 52.42 or 52.43 shall be returned by the Board to the office from which it was received. Only a copy of the information provided by the Coast Guard or other Government office for release to the applicant in accordance with § 52.43(c) shall be retained in the permanent record of proceedings after final action is taken.

§ 52.64 Final action.

(a) The Board, provided that it acts unanimously, may take final action on behalf of the Secretary, pursuant to 10 U.S.C. 1552, as follows:

(1) The Board may deny an application for the correction of military records.

(2) Unless the Coast Guard, in submitting its views pursuant to § 52.42(b), identifies and describes a significant

issue of Coast Guard policy challenged in the application, the Board may approve an application for the correction of military records in any of the following categories:

- (i) An application to correct an enlistment or reenlistment contract or agreement to extend an enlistment for the purpose of effecting or increasing entitlement to a Selective Reenlistment Bonus;
- (ii) An application to modify an election to participate in the Survivor Benefit Plan;
- (iii) An application to change a reenlistment eligibility code;
- (iv) An application to correct the character of, or reason for, a discharge or separation; or
- (v) An application to receive a medal or award.

(3) The Board may approve any application for correction of military records not included in one of the categories in paragraph (a)(2) of this section, if the Coast Guard recommends the same or substantially same relief as that requested by the applicant.

(b) Except in cases where the Board takes final action under paragraph (a) of this section, the Board shall forward the record of its proceedings to the Secretary, who may approve, disapprove, or concur in the decision of the Board or the minority report, if any, either in whole or in part, and amend the order of the Board accordingly, or return the case to the Board for additional consideration. After taking final action, the Secretary shall send any such statement and the record of proceedings to the Board for disposition.

§ 52.65 Orders.

(a) The Board shall issue such orders or directives as may be necessary to carry out a final action.

(b) The Board may ask the Coast Guard to submit a written report to the Board specifying the action taken and the date thereof with respect to any final action.

(c) Unless doing so is likely to nullify the relief granted, copies of the final decision shall be placed in the military record of the applicant.

§ 52.66 Notification.

After final action is taken under § 52.64, the Board shall send a copy of the final decision to the applicant. The applicant may inspect the permanent record of proceedings at Board offices.

§ 52.67 Reconsideration.

(a) Reconsideration of an application for correction of a military record shall occur if an applicant requests it and the request meets the requirements set forth in paragraph (a)(1) or (a)(2) of this section.

(1) An applicant presents evidence or information that was not previously considered by the Board and that could result in a determination other than that originally made. Such new evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence; or

(2) An applicant presents evidence or information that the Board, or the Secretary as the case may be, committed legal or factual error in the original determination that could have resulted in a determination other than that originally made.

(b) The Chair shall docket a request for reconsideration of a final decision if it meets the requirements of paragraph (a)(1) or (a)(2) of this section. If neither of these requirements is met, the Chair shall not docket such request.

(c) The Board shall consider each application for reconsideration that has been docketed. None of the Board members who served on the Board that considered an applicant's original application for correction shall serve on the Board that decides the applicant's application upon reconsideration.

(d) Action by the Board on a docketed application for reconsideration is subject to §§ 52.26 and 52.64(b).

(e) An applicant's request for reconsideration must be filed within two years after the issuance of a final decision, except as otherwise required by law. If the Chair docketed an applicant's request for reconsideration, the two-year requirement may be waived if the Board finds that it would be in the interest of justice to consider the request despite its untimeliness.

Subpart H—Payment of Claims and Implementation of Orders

§ 52.71 Authority to pay.

(a) The Coast Guard is authorized to pay the claims of any person as the result of any action heretofore or hereafter taken under 10 U.S.C. 1552.

(b) The Coast Guard is not authorized to pay any claim heretofore compensated by Congress through enactment of private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

§ 52.72 Implementation of orders.

(a) In each case the Board shall transmit a copy of its decision or the Secretary's decision to the proper Coast Guard authority for determination of monetary benefits due, if any, as a result of the action of the Board and for corrections of the military record ordered by the Board.

(b) Upon request, the claimant is required to furnish to the Board or to the Coast Guard any information necessary to determine the proper parties to the claim for payment under applicable provisions of law.

(c) Appropriate records shall be examined in light of the Board's decision to determine all amounts which may be due. Amounts found due are subject to setoff in the amount of any existing indebtedness to the Government arising from Coast Guard service and to other setoffs required by law or regulation.

(d) At the time of payment, the claimant shall be advised as to the nature and amount of the various benefits represented by the total settlement, and of the fact that acceptance of the settlement constitutes a complete release by the claimant of any claim against the United States on account of the correction of record ordered by the Board.

§ 52.73 Interpretation.

If the intent or import of the final decision is not clear to the Coast Guard, if the Coast Guard believes that executing all or part of the order in the final decision is beyond the Coast

Guard's authority, or if the Coast Guard believes that the order is incomplete because of an oversight, the final decision shall be returned to the Board for clarification or technical amendment.

§ 52.74 Report of settlement.

When payment is made pursuant to the order of the Board, the Board may request the Coast Guard to notify it of the name of any person to whom payment was made and of the amount of the payment.

Subpart I—Public Access to Decisions

§ 52.81 Reading room and index.

After deleting only so much personal information as is necessary to prevent an unwarranted invasion of privacy of the applicant or other persons mentioned in the final decision of the Board, a redacted copy of each final decision shall be indexed by subject and made available for review and copying at a public reading room. Final decisions created on or after November 1, 1996, shall be made available by electronic means. 5 U.S.C. 552.

PART 53—COAST GUARD WHISTLEBLOWER PROTECTION

Sec.

53.1 Purpose.

53.3 Applicability.

53.5 Definitions.

53.7 Requirements.

53.9 Responsibilities.

53.11 Procedures.

AUTHORITY: 10 U.S.C. 1034; Pub. L. 100–456, 102 Stat. 1918; Pub. L. 101–225, 103 Stat. 1908; Pub. L. 107–296, 116 Stat. 2135.

SOURCE: 56 FR 13405, Apr. 2, 1991, unless otherwise noted.

§ 53.1 Purpose.

This part:

(a) Establishes policy and implements section 1034 of title 10 of the United States Code to provide protection against reprisal to members of the Coast Guard for making a lawful communication to a Member of Congress or an Inspector General.